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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,163	12/31/2003	James A. Harding	MIPS.234A	5011

20995 7590 03/26/2009  
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EXAMINER
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SHAH, AMEE A

ART UNIT	PAPER NUMBER
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3625

NOTIFICATION DATE	DELIVERY MODE
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03/26/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/750,163	<b>Applicant(s)</b> HARDING ET AL.	
	<b>Examiner</b> AMEE A. SHAH	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/11/08.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-11 and 33-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-11 and 33-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 3-11 and 33-70 are pending in this action.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3-7 and 33-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner notes that the limitation “wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller” is a negative limitation (i.e. the user does not leave the web site or go to the seller web site). This limitation does not have explicit basis in the original disclosure. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 USC §112, 1st paragraph as failing to comply with the written description requirement (see MPEP §2173.05(i)). Paragraph 0023 of the specification (page 5) discusses added the item to the user's shopping cart and the user subsequently proceeding to check out and finalize an order for the items in the cart, but does not specifically support that the user does not have to leave the web site or navigate to the featured seller web site.

***Claim Rejections - 35 U.S.C. § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 58-70 are rejected under 35 U.S.C. 101 because it is not tied to a machine not does it transform underlying subject matter (such as an article or materials) to a different state or thing. *See In re Bilski et al*, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); and *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 58-70 are non-statutory since they may be performed within the human mind. The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion *Ex parte Langemyer et al*- available at

[http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqcases2&wsn=5](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2&wsn=5)

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[00826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=](http://00826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0)[0](#).***Examiner Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 3-11, 33, 34, 40, 41, 45, 46, 52, 53, 58, 59, 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al., US 2001/0054008 A1, previously cited (hereafter referred to as “Miller”) in view of English, US 2003/0055723 A1, previously cited (hereafter referred to as “English”) and further in view of Chopra, US 2002/0128920 A1 (hereafter referred to as “Chopra”).**

Referring to claims 3, 6, 7, 9 and 58. Miller teaches a method in a computing system for responding to a request for information about an item (see, e.g., Abstract), comprising:

- receiving at the computer system a request for information about the item (Figs. 10 and 11 and ¶¶0171 and 0176);
- among a plurality of sellers, identifying via a computer system those that are offering the item for sale and whose availability level for the selected item exceeds a predetermined availability threshold (¶¶0171, 0172, 0174, 0176 and 0178 – note the predetermined availability threshold is one, i.e. the item being in stock);
- selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the selected item at the lowest price (Fig. 11 and ¶¶0176-0179 – note the selection of the vendor can be based on price, which can be the lowest price, and that the featured seller is chosen from those sellers that are offering the item for sale and also from those that may have the item in stock); and

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- replying via the computer system to the request for information with a web page containing a perceptible distinction with respect to a featured/distinguished seller and both (1) information describing the item including the price at which the featured/distinguished seller is offering the item, and (2) a control that, when activated, adds the item to a shopping cart associated with the user so that the order will be placed from the seller when check out is performed the item from the featured seller or another seller (Fig. 5A, which shows a hyperlink to "Add this to my BuyList," and a perceptible distinction with respect to a distinguished seller, OfficeMax who is in another, separate box, and ¶¶0151, 0171, 0173, 0176, 0179, 0193 – note that the adding to the BuyList, i.e. shopping cart, next to each seller, including the featured seller and non-featured sellers, is for the intended use of placing the order from the seller when check out is performed and that there is a universal shopping cart associated with each buyer).

While Miller teaches identifying sellers based on various criteria including identifying a distinguished seller, it does not explicitly teach identifying sellers that have a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. English teaches a method of comparing, advertising and switching vendors including the known technique of selecting the vendors having the item for sale based on a score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold (¶0062 – note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating). This known technique is applicable to the method of Miller as they both share characteristics and capabilities, namely they are directed to providing buyers with information.

One of ordinary skill in the art would have recognized that applying the known technique of English would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of English to the teachings of Miller would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, selecting a seller based on meeting a predetermined score threshold, as taught by English, would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow for customers to have more and better access to information relating to an item in order for the customer to make better purchasing decisions, as suggested by Miller (¶0007).

While Miller teaches identifying sellers based on various criteria including identifying a distinguished seller based on price, which can be the lowest price, and allowing users to purchase items, it does not explicitly teach identifying a seller based on the lowest price, and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller. Chopra teaches a method for providing lowest cost purchasing including identifying a seller based on the lowest price (¶¶0023-0026), and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller (¶0029). These known techniques are applicable to the method of Miller as they both share characteristics and capabilities, namely they are directed to providing product information and purchasing products.

One of ordinary skill in the art would have recognized that applying the known techniques of Chopra would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known techniques of Chopra to the



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teachings of Miller would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, having the identified seller of Miller be based on lowest price, as taught by Chopra, and completing the purchase of Miller without navigating to the seller web site, as taught by Chopra, would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow for customers to get the information they desire regarding price and to more quickly and easily complete a purchase.

Referring to claim 4. Miller/English/Chopra teaches the method of claim 3 wherein the identifying and selecting is performed before the receiving (Miller, ¶0175 and English, ¶0074 – note that by having featured vendors being selected from those that have paid a fee, the identifying and selecting occurs before a request is received).

Referring to claim 5. Miller/English/Chopra teaches the method of claim 3 wherein the identifying and selecting is performed at a uniform time interval (Miller, ¶0179 – note the uniform interval is each time a request is received which is uniform in that it is evenly applied), and the most recently selected featured seller is used in replying to each of a plurality of received requests (Miller, ¶¶0175 and 0188 – note the most recently selected featured seller is determined by the paying seller and the most hits).

Referring to claims 8 and 11. All of the functional limitations in apparatus claims 8 and 11 are closely parallel to the limitations of method claims 3-6, analyzed above and are rejected on the same bases.

Referring to claim 10. Miller/English/Chopra teaches the apparatus of claim 8 wherein the data structure further contain content specifying the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller (Miller, Fig. 5A - note the "BuyItNow" or "Add to BuyList" controls are by each seller), but do not specifically teach that the control for the distinguished seller is displayed more prominently than the secondary controls. However, this difference is only found in the nonfunctional descriptive material and is not functionally involved in the functions of specifying the display of secondary controls recited. The specifying of the display of secondary controls would be performed in the same manner regardless of whether the controls were smaller or larger than others, particularly because it is simply a display. Thus, the non-functional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to specify the display of secondary controls regardless of the specific size of the control, because such information does not functionally relate to the displaying of controls function and also because the subjective interpretation of the displaying does not patentably distinguish the claimed invention. Furthermore, claims directed to an apparatus must be

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distinguished from the prior art in terms of structure rather than function, *see In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (Bd. Pat. App. & Inter. 1987). Thus the structural limitations of claim 10, including a data structure specifying the display of secondary controls are taught by Miller.

Referring to claims 33, 45 and 59. Miller/English/Chopra further teaches wherein the featured seller is visually emphasized on a web page with respect to other sellers identified on the web page (Miller, Fig. 5A – note that "OfficeMax" as a local seller is visually identified in a separate box that emphasizes OfficeMax, and English, ¶0074 – note that by placing the featured vendor first, the featured seller is visually emphasized with respect to other sellers).

Referring to claims 34 and 46. Miller/English/Chopra further teaches the method of claim 3 wherein the threshold is settable to different values (English, ¶0062 - note that vendors of varying ratings, i.e. scores, are displayed based on the current vendor rating, i.e. threshold, so that if a user has rated a vendor with 7.5, only vendors with scores the same as or above the threshold of 7.5 are shown, but if the user rated a vendor is 5.0, vendors with scores above the threshold of 5.9 would be shown, thus the threshold is settable to different values).

Referring to claims 40, 41, 52, 53, 66, and 67. Miller/English/Chopra teaches the method and apparatus of claims 3, 7 and 58 further comprising providing a plurality of controls corresponding to at least a portion of the sellers, including those other than the featured seller, wherein activation of any of the plurality of controls will cause the item to be added to the user's shopping cart (Miller, Fig. 5A, which shows a hyperlink by at least a portion of the sellers to "Add this to my BuyList," i.e. a shopping cart, wherein clicking on the hyperlink will cause the item to be added to the user's shopping cart and ¶¶0151, 0171, 0173, 0176 and 0179).

**Claims 35-39, 47-51 and 61-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller/English/Chopra as applied to claims 3, 7 and 58 above, and further in view of Callender et al., US 2002/0147657 A1, previously cited (hereafter referred to as "Callender").**

Referring to claim 35, 47 and 61. Miller/English/Chopra teach the methods and apparatus of claims 3, 7 and 58 wherein the threshold is settable to different values (English, ¶0062), but do not teach the threshold being settable to a time period corresponding to a plurality of days. Callender teaches a method, system and program for determining item availability including the known technique of setting an availability threshold to a time period corresponding to a number of days (Fig. 7 and ¶¶0006, 0007, 0026 and 0027 – note that the time period is today, tomorrow, etc., i.e. the number of days can be one (today), two (tomorrow) etc., for determining availability). This known technique is applicable to the method of Miller/English/Chopra as they all share characteristics and capabilities, namely they are all directed to providing information to buyers and purchasing products.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English/Chopra would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, setting the availability threshold to a time period corresponding to a plurality of days, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (¶0004).

Referring to claims 36, 37, 48, 49, 62 and 63. Miller/English/Chopra teach the methods and apparatus of claims 3, 7 and 58 providing for a display to a user who submitted the request an availability level of the featured seller and other sellers, but do not specifically teach displaying a numerical value corresponding to the availability level of the sellers. Callender teaches a method, system and program for determining item availability including the known technique of displaying the number of units available at each retailer, i.e. a numerical value corresponding to the availability level of the featured seller and other sellers (¶0026). This known technique is applicable to the method of Miller/English as they all share characteristics and capabilities, namely they are all directed to providing information to buyers and purchasing products.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English/Chopra would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, displaying a numerical value corresponding to the availability level of the featured seller and other sellers, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (§0004).

Referring to claims 38, 50 and 64. Miller/English/Chopra teach the methods and apparatus of claims 3, 7 and 58 providing for a display to a user who submitted the request an availability level of the featured seller and other sellers, but do not specifically teach displaying a numerical value corresponding to the availability level of the sellers, wherein the numerical value is settable to a value greater than one. Callender teaches a method, system and program for determining item availability including the known technique of displaying the number of units available at each retailer, i.e. a numerical value corresponding to the availability level of the featured seller and other sellers, wherein the numerical value is settable to a value greater than one by the retailer (§0026). This known technique is applicable to the method of Miller/English/Chopra as they all share characteristics and capabilities, namely they are all directed to providing information to buyers and purchasing products.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English/Chopra would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, displaying a numerical value corresponding to the availability level of the featured seller and other sellers and settable to a value greater than one, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (§0004).

Referring to claims 39, 51 and 65. Miller/English/Chopra teach the methods and apparatus of claims 3, 7 and 58 providing for a display to a user who submitted the request an availability level of the featured seller and other sellers, but do not specifically teach displaying a range corresponding to an availability level of at least one of the plurality of sellers, the range including a lower bound and an upper bound wherein the upper bound is different than the lower bound. Callender teaches a method, system and program for determining item availability including the known technique of displaying the number of units available at each retailer with a range of how many units would be available at what time, i.e. a range corresponding to an availability level within upper and lower bounds (§§0026-0027 – note that the range is that 2 units are available tomorrow, but x units are available today, the bounds which may be different). This known technique is applicable to the method of Miller/English/Chopra as they all share

characteristics and capabilities, namely they are all directed to providing information to buyers and purchasing products.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Callender to the teachings of Miller/English/Chopra would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, displaying a range of availability levels within lower and upper bounds, as taught of Callender would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to have a better idea whether the item is still likely to be in stock when they order it, as suggested by Callender (§0004).

**Claims 42, 54 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller/English/Chopra, as applied to claims 3, 7 and 58 above, and further in view of Hartman et al., US 5,960,411, previously cited (hereafter referred to as “Hartman”).**

Referring to claims 42, 54 and 68. Miller/English/Chopra teach the methods and apparatus of claims 3, 7 and 58 further comprising providing a control to a user who submitted the request which when activated orders the item from the seller (Miller, Fig. 5A, "BuyItNow" which when activated, orders the item from the seller), but does not specifically teach that the ordering is performed without the user performing any subsequent interactions. Hartman teaches a method, system and program for ordering through “one-click” wherein items can be ordered by



activating one control without the user performing any subsequent interactions (see, e.g., Abstract and col. 3, lines 31-66).

It would have been obvious to one of ordinary skill in the art of business methods at the time of the invention to include in the commerce method and apparatus of Miller/English/Chopra the ability to order an item through activating a control without the user performing any subsequent interactions, as taught by Hartman, since the claimed invention is merely a combination of old elements, and in the combination each element would have performed the same function as it did separately, and one ordinary skill in the art would have recognized that results of the combination were predictable.

**Claims 43, 44, 55-57, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller/English/Chopra, as applied to claims 3, 7 and 58 above, and further in view of Abdulhayoglu, US 7,296,053 B1, previously cited (hereafter referred to as “Abdulhayoglu”).**

Referring to claims 43, 44, 55-57, 69 and 70. Miller/English/Chopra teaches providing the user with information regarding the sellers which can be sorted by price, as discussed above, and where a highlighted seller can be selected based on various criteria such as shipping availability (Miller, ¶0178), but does not specifically teach displaying to the user shipping timing information for the item for the featured seller and at least one other seller based on a determination as to which of the plurality of sellers has the fastest shipping time, wherein the determination is made using shipping time information corresponding to the plurality of sellers. Abdulhayoglu teaches a method and apparatus for providing user information regarding products

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available through various merchants including the known technique of displaying shipping time information for each seller based on a determination as to which of the plurality of sellers has the fastest shipping time, wherein the determination is made using shipping time information corresponding to the plurality of sellers (col. 5, line 46 through col. 6, line 37 - note that shipping times are received from the merchants and displayed to the user in a desired format), and once the shipping times are retrieved, the sellers with the fastest shipping time can be selected and indicated as such, as taught by Miller (¶0178). This known technique is applicable to the method of Miller/English/Chopra as they all share characteristics and capabilities, namely they are all directed to providing information to buyers and purchasing products.

One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known technique of Abdulhayoglu to the teachings of Miller/English/Chopra would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, obtaining and displaying shipping times, as taught of Abdulhayoglu would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow buyers to make a better comparison between vendors based on desirable criteria, as suggested by Abdulhayoglu (col. 6, lines 19-23).

### ***Response to Amendment***

Applicant's amendment, filed December 11, 2008, has been entered. Claims 3, 5, 7, 8, 34, 35, 40, 41, 43-47, 52, 55, 57, 66, 69 and 70 have been amended. In view of the amendments

to the claims, the previous 35 USC §112 rejections for claims 34, 35, 40, 43, 44-47, 52, 55-57, 66, 69 and 70 and the 35 USC §101 rejections for claims 7-11, 46-54 and 56 are withdrawn.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. However, to the extent some of the arguments are still applicable, the examiner addresses them as follows.

Applicant's arguments filed December 11, 2008, have been fully considered but they are not persuasive. In response to applicant's argument that neither Miller nor English disclose "first identifying sellers based on a first set of criteria, and then further performing a selection of the identified sellers by selecting as a featured seller, from the sellers identified among the plurality of sellers, an identified seller offering the item at the lowest price," (Remarks, pages 11-12), the examiner disagrees. As discussed above, Miller teaches among a plurality of sellers, identifying those that are offering the item for sale and whose availability level for the selected item exceeds a predetermined availability threshold and selecting as the featured seller of the item from the identified sellers based on price (which could be the lowest price) (see Fig. 11). As also discussed above, English teaches the known technique of selecting the vendors having the item for sale based on a score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and it would be obvious to combine the two references. Furthermore, examiner refers to Chopra for the teaching of selecting a seller based on the lowest price, and it would be obvious to combine with Miller and English for the limitation of identifying a features seller based on the lowest price.

In response to applicant's argument with respect to claim 4 that Miller and English do not teach the identifying and selecting of vendors occurring before a request is received (Remarks, page 15), the examiner disagrees. English teaches identifying and selecting vendors from those who have paid a fee occurs before a request is received. The availability of "the item" is the availability of any item as a request for a particular item is not yet received, and thus no specific item is identified. While applicant argues that "the item" can be an item identified as being popular, this is not clear and is not recited in the claims. Thus, "the item" can be any item.

In response to applicant's argument with respect to claim 5 that Miller and English do not teach identifying or selecting a uniform level (Remarks, page 15), the examiner disagrees. Miller teaches identifying and selecting in response to receiving a user request as discussed above, with the uniform interval being each time the request is received. In response to applicant's argument that the Miller teaches away from the present invention because the acts are repeated each time a product identifier is received whereas the present invention uses a uniform time interval (Remarks, page 15), the Examiner disagrees. Miller does not criticize, discredit, or otherwise discourage that each time a request is received can be a uniform time interval (e.g. by batch processing requests or by evenly and equally, i.e. uniformly, identifying and selecting), and therefore does not teach away from the present invention. *See* MPEP §2141.02.

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: (1) Jankelwitz, US 7,035,816 B2, discloses a system and method for enabling a customer to purchaser one or more goods or services from a plurality of suppliers

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offering the goods at the lowest aggregate price whereby prices and number of units available in stock are gathered from various suppliers and displayed to the shopper (see, e.g., Abstract, Fig. 11 and columns 6-16); (2) Bertani, US 2002/0174076 A1, discloses a system and method for multiple cost analysis for multiple, different items comprising processing a request for items, identifying vendors offering the items, identifying prices of the items from the vendors, identifying shipping and handling costs from the vendors of the items, calculating the lowest total costs, identifying the most cost effective purchase, and displaying that to the user (see, e.g. Abstract and pages 2-4); and (3) Dworkin, 4,992,940, discloses an automated system that assists a user in locating a purchasing goods sold by a plurality of vendors including receiving requests from users, searching a database to retrieve all products and suppliers matching the request, identifying suppliers based on availability and price, and placing the order with the vendor on behalf of the user (see, e.g., Figs, 6-8 and columns 2-10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMEE A. SHAH whose telephone number is (571)272-8116. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Amea A Shah/  
Examiner, Art Unit 3625

AAS  
March 23, 2009